

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6520

Joint Petition of Qwest Communications Corporation, )  
USLD Communications, Inc., LCI International )  
Telecom Corp., and Phoenix Network, Inc. for Approval )  
of a Corporate Restructuring and Related Transactions )

Order entered: 9/6/2001

**I. INTRODUCTION**

On May 31, 2001, Qwest Communications Corporation ("Qwest"), USLD Communications, Inc. ("USLD"), LCI International Telecom Corp. ("LCI"), and Phoenix Network, Inc. ("Phoenix") (collectively "Petitioners") jointly filed a Telecommunications Merger and or Acquisition Request for Approval Form ("Petition") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. §§ 107, 109, 231 and 311, for approval of a corporate restructuring to be accomplished through a series of mergers and transfers of control. On July 11, 2001, Petitioners filed a letter with the Board requesting that the Certificates of Public Good ("CPG") to provide telecommunications services in Vermont held by LCI and Phoenix be revoked effective upon the date of the transaction's closing.

On July 30, 2001, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending the Board approve the mergers and transfers of control, and revoke LCI's and Phoenix's CPGs, because the proposed transactions would not detrimentally impact Vermont consumers or cause them inconvenience or confusion. The Department further recommended the Board approve the petition without further investigation or hearing.

The Board has reviewed the Petition and the accompanying documents and agrees that approval should be granted without hearing.

**II. FINDINGS OF FACT**

Based upon the Petition and accompanying documents, we hereby make the following findings of fact.

1. Qwest is a competitive local exchange carrier headquartered in Denver, Colorado. Qwest is authorized to provide telecommunications services in Vermont pursuant to a Certificate of Public

Good granted by the Board on March 20, 1998 (CPG No. 311). Petition at Exhibits A & B.

2. LCI, Phoenix and USLD are direct or indirect wholly-owned subsidiaries or commonly-owned affiliates of Qwest with principal offices in Denver, Colorado. All are authorized to provide telecommunications services in Vermont. LCI was granted CPG No. 105 on June 18, 1992, Phoenix was granted CPG No. 120 on March 12, 1993, and USLD was granted CPG No. 122 on January 25, 1993. Petition at Exhibits A & B.

3. USLD is currently a direct, wholly-owned subsidiary of USLD Communications Corp., which is in turn, a wholly-owned subsidiary of LCI International, Inc; both are affiliated entities of Qwest. Neither Qwest Communications International, Inc., nor USLD Communications Corp. are authorized to provide telecommunications services in Vermont. Petition at Exhibit C.

4. The proposed corporate restructuring will be effectuated by means of the following steps: (1) LCI, an indirect, wholly-owned subsidiary of Qwest, will be merged with and into Qwest, with Qwest as the surviving entity; (2) Phoenix, a wholly-owned subsidiary of Qwest, will be merged with and into Qwest with Qwest as the surviving entity; and (3) USLD will be merged into its parent corporation, USLD Communications Corp., which is an indirect, wholly-owned subsidiary of Qwest Communications International, Inc., the ultimate parent corporation of Qwest. USLD will be the surviving entity of the merger. Neither Qwest Communications International, Inc., nor USLD Communications Corp. are authorized to provide telecommunications services in Vermont. Petition at Exhibit C.

5. As a result of the mergers, both LCI and Phoenix will no longer operate as a telecommunications provider in Vermont and consequently they request revocation of their respective CPGs. The customers of both Phoenix and LCI will be served by Qwest and the services offered by both entities will be incorporated into the tariff of Qwest. LCI and Phoenix have agreed to reimburse any switching fees incurred by customers as a result of the transactions. USLD will continue to operate under its current name and tariff. Accordingly, the mergers will not cause any inconvenience for Vermont consumers. Petition at 2-3; Exhibit C; and Department letter dated July 30, 2001, at 2.

6. The proposed transactions should result in a more efficient corporate structure and a reduction of administrative burdens associated with duplicative operations, thus enhancing the ability of the Petitioners to offer competitively priced services in the Vermont interexchange telecommunications marketplace and promoting the public . Petition at Exhibit H.

### **III. DISCUSSION**

The proposed transaction requires approval by the Board under 30 V.S.A §§ 107, 109 and 311. These statutes condition approval of a proposed transfer of control upon findings that the transfer of control will promote the public good (30 V.S.A § 107). The statutes also condition approval of a merger upon a finding that the merger will promote the public good (30 V.S.A. § 109) and will not obstruct or prevent competition (30 V.S.A § 311). These standards are met in this case.

Pursuant to 30 V.S.A. § 109, "a foreign corporation subject to the jurisdiction of the [Board], shall not . . . merge nor consolidate . . ." without approval of the Board. 30 V.S.A. § 311 states that "[a] consolidation or merger . . . shall not become effective without the approval of the [Board] . . . ." Under 30 V.S.A. § 107(a), "[n]o company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the [Board] . . . without the approval of the [Board]." "Controlling interest" is defined as "ten percent or more of the outstanding voting securities of a company" or such other interest as the Board determines "to constitute the means to direct or cause the direction of the management or policies of a company." 30 V.S.A. § 107(c)(1).<sup>1</sup> In order to approve the acquisition of such a controlling interest, the Board must first find that it will "promote the public good." 30 V.S.A. § 107(b).

After reviewing the Petition, we conclude that 30 V.S.A §§109 and 311 apply to the mergers of the Petitioners, which are certificated telecommunications carriers in Vermont. We also conclude that 30 V.S.A. § 107 applies because the merger of USLD with its parent corporation, USLD Communications Corp., will result in the transfer of controlling interest of USLD, into the direct control of LCI International, Inc., and thus results in the transfer of more than ten percent of the shares of USLD to another company. We further conclude that the mergers will not affect the services that LCI, Phoenix and USLD currently provide to customers in Vermont. USLD will continue to operate under its current name and tariff. The customers of LCI and Phoenix will be served by Qwest under their respective tariff offerings which will be consolidated into Qwest's tariff. In addition, LCI and Phoenix have agreed to reimburse any switching fees incurred by customers due to the transactions. The mergers and resulting transfer of control, therefore, will promote the public good. For all of these reasons, we conclude that the proposed transaction meets the standards set forth in 30 V.S.A. §§ 107,109, and 311 and should be approved.

Petitioners have also requested that the Board revoke the CPGs held by LCI and Phoenix, in

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1. The statute also provides that "[t]he presumption that ten percent or more of the outstanding voting securities of a company constitutes a controlling interest may be rebutted by a company under procedures established by the board by rule." 30 V.S.A. § 107(c)(1).

that these companies will, as a result of the mergers into Qwest, no longer operate in Vermont. No opposition to this request has been raised. The Board finds the reasons articulated by the Petitioners in support of the request to be convincing. This finding, together with the fact that no opposition to the filing has been registered with the Board, leads us to conclude that the Petitioners' CPGs should be revoked. While 30 V.S.A. §§ 102(c) and 231(a) require that a hearing be held before revocation of a CPG is allowed, we note that Rule 56 of the V.R.C.P. provides that where no genuine issue of material fact exists, a hearing is not necessary. We find that the requirements of V.R.C.P. Rule 56 are met in this case and, therefore, grant the Petitioners' request without a hearing.

#### **IV. CONCLUSIONS**

The mergers of LCI and Phoenix with and into Qwest and the merger of USLD with ULSD Communications Corp., resulting in the transfer of control of ULSD to LCI International Inc., should be approved because the transactions will promote the public good of the State of Vermont and will not result in obstructing or preventing competition. 30 V.S.A. §§ 107(b), 109, 311.

#### **V. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The merger of LCI International Telecom Corp. with and into Qwest Communications Corporation, will promote the public good and, therefore, is approved.
2. The merger of Phoenix Network, Inc. with and into Qwest Communications Corporation, will promote the public good and, therefore, is approved.
3. The merger of USLD Communications, Inc. with USLD Communications Corporation, will promote the public good and, therefore, is approved.
4. The transfer of control of USLD Communications, Inc. to LCI International, Inc., will promote the public good and, therefore, is approved.
5. Effective with the completion of the merger into Qwest Communications Corporation, the Certificate of Public Good (CPG No. 105) issued to LCI International Telecom Corp., on June 18, 1992, is revoked.
6. Effective with the completion of the merger into Qwest Communications Corporation, the Certificate of Public Good (CPG No. 120) issued to Phoenix Network, Inc., on March 12, 1993, is revoked.
7. Petitioners shall file a letter notifying the Board of the completion of the transactions within one week of such completion.

8. Qwest Communications Corporation shall file revisions to its tariff to include the existing service offerings of both Phoenix Network, Inc. and LCI International Telecom Corp., within one week of the completion of the transactions.

9. A Certificate of consent to the mergers of Phoenix Network, Inc. and LCI International Telecom Corp. into Qwest Communications Corporation, and the merger of USLD Communications, Inc. with USLD Communications Corporation, shall be issued.

DATED at Montpelier, Vermont, this 6<sup>th</sup> day of September, 2001.

<u>s/Michael H. Dworkin</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

Filed: September 6, 2001

Attest: s/Susan M. Hudson

Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any technical errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us).*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*